

**ENTERED**

May 20, 2020

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION****UNITED STATES OF AMERICA,  
Plaintiff/Respondent,****v.****COLEMAN DERRYBERRY,  
Defendant/Movant.**§  
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§**CRIMINAL NO. 6:19-24****MEMORANDUM OPINION & ORDER**

Pending before the Court is Defendant/Movant Coleman Derryberry's letter motion for home confinement. D.E. 33.

**I. BACKGROUND**

In June 2019, Defendant pled guilty to being a felon in possession of firearms. He has served roughly 13 months (27%) of his 48-month sentence and has a projected release date of August 30, 2022. Defendant is in custody at the Coastal Bend Detention Center and states that he had stomach surgery in 2018 and currently suffers from Hepatitis C. He now moves the Court to order that he be allowed to serve the remainder of his sentence in home confinement because he fears contracting COVID-19 while incarcerated.

**II. LEGAL STANDARD**

In a March 26, 2020, Memorandum, Attorney General William Barr directed the BOP Director to "prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic." March 26, 2020 Memo from the Attorney General, *Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic*, available at <https://www.justice.gov/coronavirus/DOJ> response (last visited 5/5/2020). The March 26 directive was limited to *eligible* "at-risk inmates

who are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement rather than in BOP facilities.” *Id.*<sup>1</sup>

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. No. 116-136, was signed into law. Pre-CARES Act, the Bureau of Prisons (BOP) was authorized to “place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.” 18 U.S.C. § 3624(c)(2). Under the CARES Act:

(2) HOME CONFINEMENT AUTHORITY.—During the covered emergency period, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under the first sentence of section 3624(c)(2) of title 18, United States Code, as the Director determines appropriate.

CARES Act § 12003(b)(1)(B)(2).

General Barr issued another Memorandum on April 3, 2020, “finding that emergency conditions are materially affecting the functioning of the [BOP]” and “expand[ing] the cohort of inmates who can be considered for home release.” April 3, 2020 Memo from the Attorney General, *Increasing Use of Home Confinement at Institutions Most Affected by COVID-19*, available at <https://www.justice.gov/coronavirus/DOJresponse> (last visited 5/5/2020). General Barr directed the BOP Director to review all inmates with COVID-19 risk factors—not only those who were previously eligible for home confinement—starting with inmates incarcerated at FCI Oakdale, FCI Danbury, FCI Elkton, and similarly situated facilities where COVID-19 is

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1. According to the Centers for Disease Control and Prevention, “older adults and people of any age who have serious underlying medical conditions might be at higher risk for severe illness from COVID-19.” See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>?(last visited 5/5/2020). These conditions include: chronic lung disease; moderate to severe asthma; serious heart conditions; severe obesity; diabetes; chronic kidney disease; and liver disease. Also at a higher risk are people who are immunocompromised due to cancer treatment; smoking; bone marrow or organ transplantation; immune deficiencies; poorly controlled HIV or AIDS; and prolonged use of corticosteroids and other immune weakening medications. *Id.*

materially affecting operations. *Id.* All at-risk inmates at such facilities who are deemed suitable for home confinement shall be immediately processed, transferred to an appropriate BOP facility for a 14-day quarantine, and released to home confinement. *Id.*

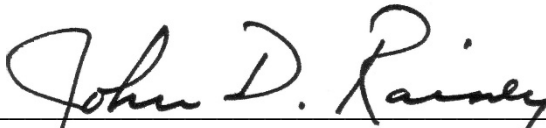
### III. ANALYSIS

While the CARES Act allows the BOP Director to lengthen the amount of time a prisoner may be placed in home confinement, nothing in the Act grants individual prisoners the right to serve the remainder of their sentence in home confinement.<sup>2</sup> The BOP still has exclusive authority to determine where a prisoner is housed. 18 U.S.C. § 3621(B). Defendant's initial remedy to challenge this determination is by administrative action within the BOP. The proper vehicle to thereafter challenge the BOP's administrative decisions is a petition pursuant to 28 U.S.C. § 2241, which must be filed in the same district where the prisoner is incarcerated. *See Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000). Defendant is currently incarcerated in Robstown, Texas, which is located in the Southern District of Texas. Thus, assuming Defendant remains incarcerated in Robstown, he should file any § 2241 petition in this Court after first exhausting his administrative remedies.

### IV. CONCLUSION

Accordingly, Defendant's letter motion for home confinement (D.E. 33) is **DENIED**.

It is so **ORDERED** this 18<sup>th</sup> day of May, 2020.

  
JOHN D. RAINEY  
SENIOR U.S. DISTRICT JUDGE

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2. Even if it did, Defendant has offered no evidence that he is considered at-risk for COVID-19 complications or that he is being housed at a facility where COVID-19 is materially affecting operations.